Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

No. 90-1365

FRANK'S NURSERY & CRAFTS, INC.,

Petitioner,

v.

MARTHA DUNHAM AND PRESTON DUNHAM,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh District

RESPONDENTS' MOTION SUPPORTING THE PETITION FOR A WRIT OF CERTIORARI PURSUANT TO ORDER OF THE SUPREME COURT

SAUL I. RUMAN
Counsel of Record
THOMAS A. CLEMENTS
RUMAN, CLEMENTS & TOBIN
5261 Hohman Avenue
Hammond, IN 46320
(219) 933-7600

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Comes now the Respondents, Martha Dunham and Preston Dunham, and for their Answer to the Petition for Writ of Certiorari, pursuant to the Supreme Court's Order, allege as follows:

1. The issue raised in the Petition

for a Writ of Certiorari is the applicability of the holding in Batson v. Kentucky, 476 U.S. 79, 106 S.C. 1712 (1986), that a peremptory challenge may not be used to strike jurors based solely upon racial discrimination. The Batson case held that a prosecutor in a criminal case using a peremptory challenge to strike a juror solely for racial reasons violates equal protection guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2. In the case at bar, the Seventh Circuit held that in a civil case with a black plaintiff, the defense using a peremptory challenge to strike a black juror solely upon racial grounds would be state action and a violation of equal protection guaranteed by the Fourteenth Amendment to the United States

Constitution.

3. Respondents understand the question concerning peremptory challenges based upon race in civil cases may be answered when the Supreme Court rules on the case of Edmonson v. Leesville Concrete Co., Inc., 895 F.2d 218 (5th Cir. 1990), which held that use of a peremptory, discriminatory challenge in a civil case was constitutional, and which has been argued before the Supreme Court.

4. Respondents urge the Supreme Court to accept Certiorari in this case and consider the well-reasoned decision of the Seventh Circuit in the Dunham case in its holding that the peremptory, discriminatory challenge of a juror would be unconstitutional.

5. Respondents urge the Supreme

Court to accept Certiorari so that it will have the advantage of Dunham and the decision of the Seventh Circuit before it in deciding the issue raised by Edmonson and Dunham.

WHEREFORE, Respondents respectfully request the Supreme Court to accept Certiorari of this cause and affirm the Judgment of the Seventh Circuit Court in Dunham, as well as for all other relief just and proper in the premises.

Respectfully submitted,

SAUL I. RUMAN
Counsel of Record
THOMAS A. CLEMENTS
RUMAN, CLEMENTS & TOBIN,P.C.
5261 Hohman Avenue
Hammond, Indiana 46320
(219) 933-7600

Dated: May 10, 1991